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SUPREME COURT, U.S.
FILED
DEC 29 1997

No. 97-463

IN THE

Supreme Court of the United States

OCTOBER TERM, 1997

TEXTRON LYCOMING RECIPROCATING ENGINE DIVISION, AVCO CORP.,

Petitioner,

v.

UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, INTERNATIONAL UNION AND ITS LOCAL 787,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Third Circuit

JOINT APPENDIX

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Petition for Certiorari Filed September 12, 1997
Certiorari Granted November 14, 1997

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RELEVANT DOCKET ENTRIES

I. THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

United Automobile, Aerospace and Agricultural Implement Workers of America v. Textron Lycoming Reciprocating Engine Div., AVCO Corp., No. 4-CV-95-1918

1. 11/16/95 COMPLAINT: Rescinding a collective bargaining agreement.

2. 1/26/96 MOTION by defendant to dismiss plaintiff's complaint.

3. 1/26/96 BRIEF by defendant in support of motion to dismiss plaintiff's complaint.

4. 2/16/96 BRIEF by plaintiff United Automobile, Aerospace and Agricultural Implement Workers of America, International Union and its Local 787 in opposition to motion to dismiss plaintiff's complaint.

5. 3/7/96 REPLY BRIEF by defendant Textron Lycoming Reciprocating Engine Division, AVCO Corp., in support of motion to dismiss plaintiff's complaint.

6. 3/15/96 MOTION by plaintiff to strike or alternatively for leave to file sur-reply brief.

7. 3/21/96 ORDER by Judge James F. McClure Jr. granting motion to dismiss plaintiff's complaint and dismissing the complaint.

8. 4/1/96 ORDER by Judge James F. McClure Jr. denying motion to strike or alternatively for leave to file sur-reply brief.

9. 4/22/96 NOTICE OF APPEAL by plaintiff, Aerospace and Agricultural Implement Workers of America, International Union and its local 787 from District Court order filed 3/21/96.

10. 9/4/97 MOTION by defendant Textron Lycoming, [AVCO Corp.] for continuance of all proceedings by this Court until the Supreme Court of the United States decides whether to grant certiorari.

11. 9/9/97 ORDER by Judge James F. McClure: granting defendant's motion for continuance of all proceedings by this Court until the Supreme Court of the United States decides whether to grant certiorari; all proceedings are stayed pending consideration by the U.S. Supreme Court of defendant's anticipated petition for a writ of certiorari.

II. THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

United Automobile, Aerospace and Agricultural Implement Workers of America v. Textron Lycoming Reciprocating Engine Div., AVCO Corp., No. 96-7261

1. 5/1/96 CIVIL CASE DOCKETED. Notice filed by United Automobile, Aerospace and Agricultural Implement Workers of America, International Union and Its Local 787.

2. 7/15/96 BRIEF on behalf of Appellant Local 787 filed.

3. 7/15/96 APPENDIX on behalf of Appellant Local 787 filed.

4. 8/12/96 BRIEF on behalf of Appellee Textron Lycoming filed.

5. 8/26/96 REPLY BRIEF on behalf of Appellant Local 787 filed.

6. 7/7/97 OPINION (Becker, authoring Judge, Roth Circuit Judges, Barry, District Judge, sitting by designation), filed.

7. 7/7/97 JUDGMENT. Reversed and the cause Remanded to the said District Court for further proceedings consistent with the Opinion of the Court. Costs against appellee.

8. 7/29/97 MANDATE ISSUED, filed.

III. THE SUPREME COURT OF THE UNITED STATES

Textron Lycoming Reciprocating Engine Div., AVCO Corp. v. United Automobile, Aerospace and Agricultural Implement Workers of America, No. 97-463

1. 9/12/97 Petition for Certiorari filed.

2. 11/14/97 Certiorari granted.

AGREEMENT

Between Textron Lycoming and the International Union (UAW) and its Local Union 787 Williamsport, PA

April 1, 1994

* * *

AGREEMENT

This Agreement, made and entered into as of April 1, 1994, by and between Textron Lycoming Reciprocating Engine Division Avco Corporation a wholly owned Subsidiary of Textron Inc., 652 Oliver Street, Williamsport, Pennsylvania (hereinafter referred to as "Company") for the plants presently constituted and any additions thereto (but not any new plants) at Williamsport, Pennsylvania and the Airport at Montoursville, Pennsylvania and the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) and Its Local 787 (hereinafter jointly referred to as "Union").

Witnesseth: That the parties hereto, in consideration of their mutual interest herein set forth, promise and do hereby agree:

ARTICLE I
RECOGNITION

Section 1. The Company recognizes the Union as the sole and exclusive bargaining agent for all production and maintenance employees, shop clerical employees, computer data entry clerks, tool designers and hourly Airport service employees, but excluding all other employees, including but without limitation plant protection employees, office clerical employees, engineers, metallurgists, draftsmen, time study men, personnel department employees, accounting and payroll clerks, purchasing department employees, technical employees, and all supervisory employees with authority to hire, promote, discharge, discipline or otherwise effect changes in the status of employees or effectively recommend such action.

Section 2. The Company and the Union agree, that to the extent provided under applicable State and Federal laws and regulations, there will be no discrimination in hiring, training, promotions, lay-offs or return from lay-offs or discipline of employees because of race, color, creed, religion, age, sex, national origin, or handicap or because an employee or applicant is a disabled veteran or a Vietnam Era veteran.

Section 3.

(a) During the first sixty 60 days of employment, new employees shall be considered "probationary" employees and not eligible for company provided health care benefits. It is understood that the Company shall be sole judge of the requirements and qualifications of applicants for work and shall be the sole judge of the qualifications of such "probationary" employees for retention by the Company. The lay off and/or discharge of "probationary" employees shall not be subject to the grievance procedure.

(b) Probationary employees on layoff due to reduction of force or sick leave shall be reinstated or terminated as follows:

1. Probationary employees whose layoff time or sick leave did not exceed the actual active time worked, will be given credit for the actual time worked prior to their layoff or sick leave in computing their probationary period.

2. In establishing the seniority date of probationary employees whose lay-off time or sick leave did not exceed the actual time worked, the actual number of days worked will be counted back from the date of reinstatement and this date will become the official seniority date.

3. Probationary employees whose lay-off or sick leave exceeds the actual time worked by one (1) day or more, shall be terminated and if rehired will be considered new employees.

Section 4.

(a) Union Shop - All employees subject to the terms of this Agreement who have completed their probationary period at the date of the execution of this Agreement shall become and remain members in good standing in the Union as a condition of continued employment on and after the 30th day following the date of the execution of this Agreement.

(b) All employees subject to the terms of this Agreement shall be required to become members of the Union after they have completed their probationary period of employment, as defined in Article 1, Section 3, of this Agreement, or on and after the 30th day following the execution of this Agreement whichever is the later.

(c) The Company shall not be required to discharge any employee for failure to attain or to maintain membership in good standing in the Union unless it shall have received ten (10) days' written notice from the Union prior to the date such discharge is demanded by the Union. If the Company discharges any employee upon written demand by the Union, the Company shall not be required, except at its own election, to re-employ such employee, and if re-employed, such employee shall in all respects become a new employee.

(d) It is agreed that the Company will not be required to discharge an employee in any instance where it would result in a violation of the Labor-Management Relations Act of 1947, as amended.

(e) An employee who shall tender the initiation fees (if not already a member) and the periodic dues uniformly required as a condition of acquiring or retaining membership shall be deemed to meet this condition.

Section 5. Check-off - An employee who desires the regular monthly dues of the Union to be deducted from his pay by the Company and remitted to the proper Union Officer of the Union shall submit a fully executed Authorization Card for this purpose, said card to read as follows:

* * *

Section 6. The Union agrees to indemnify and save the company harmless against any and all claims, demands, suits, or other forms of liability that shall arise out of or by reason of action taken or not taken by the Company in complying with the provisions of this Article I.

Section 7. Notwithstanding any other provision of the Pension Plan, the Trustee, upon authorization by the Joint Board of Administration, shall deduct Union dues from any monthly retirement benefit otherwise payable to any retired employee who shall have duly authorized such deduction on a form acceptable to the Company to the extent permitted by applicable federal and state laws and regulations; and to remit such dues to the Union.

* * *

ARTICLE III
GRIEVANCE PROCEDURE

Section 1. Grievances are defined as any alleged violation of the terms of this Agreement or differences of opinion as to its interpretation or application. Subject to the provisions of Section 7 of this Article III, grievances as defined herein, shall be settled promptly in the manner hereinafter set forth.

Step 1. A grievance, except one which is of a general or policy nature, must first be taken up orally with the Department Foreman by the Department Steward and the employee asserting the grievance. However, any individual employee or group of employees shall have the right to present grievances to the Company at any time. In the event of a settlement, a Union representative shall have the right to be present.

Step 2. If no satisfactory settlement of the grievance is reached in Step 1, the Steward will reduce it to writing in duplicate on a grievance form provided by the Company, and present it to the Department Foreman. No later than two working days following that on which the grievance was presented to the Foreman, a meeting shall be held for the

purpose of a full investigation of all facts concerned with the grievance. Those present at this meeting may include the Labor Relations Manager (or his designated representative), the Department Head, the Foreman, the aggrieved employee or employees, the area Steward, the Shop Chairman (or his designated representative), the area Committeeman, and any other individual or individuals who have knowledge or information which would be pertinent to the discussion and settlement of the grievance. Within two working days following the conclusion of this meeting, the Department Head will answer the grievance and return it to the area Committeeman. Failure to answer the grievance within the time limitation specified will automatically advance it to the next Step.

Step 3. If no satisfactory settlement of the grievance is reached in Step 2 above, the grievance shall be presented by the Shop Committee to the Labor Relations Manager (or his designated representative). The Labor Relations Manager (or his designated representative) shall meet with the Shop Committee once weekly at a designated time for the purpose of settling any grievances that may be referred to this Step. The International Representative of the Union may participate in these meetings. The Labor Relations Manager (or his designated representative) shall give a written disposition to all grievances presented at this meeting within five (5) working days after this meeting. Failure to do so will automatically move the grievance to the next Step.

Step 4. (a) In the event any grievance referred to Step 3 of the grievance procedure remains unsettled following discussion of the grievance in the Step 3 meeting, the Union may notify the Company in writing that the matter is submitted to arbitration. In order to be valid, such formal notice must be given within twenty-one (21) calendar days from the date a written answer is received from the Company in Step 3. Matters so referred to arbitration shall be submitted to an impartial arbitrator selected by the parties in the following manner: A representative of the Union and a representative of the Company will meet within ten (10) calendar days after the date formal notice

of referral is given in an effort to select a qualified arbitrator who will be mutually agreeable. In the event the parties are unable to agree upon an arbitrator within such ten (10) day period after notice of referral, the Union may request the American Arbitration Association ("AAA") to submit a panel of nine (9) impartial experienced arbitrators, from which each party shall strike the names of those individuals it does not accept and shall number the remaining names, if any, in the order of preference. Upon receipt of the preferences of the parties, the AAA shall thereupon appoint the individual selected by both parties who shall have the highest combined preference. If the AAA is unable to appoint an arbitrator acceptable to both parties from the first panel, an additional panel of nine (9) arbitrators, none of whom shall have appeared on the first panel, shall be submitted to the parties for their consideration. Upon receipt of such a second panel, the parties shall meet within ten (10) calendar days and shall strike names alternately, each party striking three (3) names. The individual whose name remains shall be designated the impartial arbitrator. In the event the parties shall fail to meet to strike names from such a second panel with twenty-one (21) calendar days, or within such additional period as shall be mutually agreed upon, the AAA shall appoint an arbitrator from the list. Failing timely notice of intent to arbitrate by the Union as above provided the grievance shall be considered settled on the basis of the Company's last disposition and shall not be subject to further appeal.

(b) The Arbitrator, when duly appointed or designated, shall proceed to consider the disputed grievance without delay and shall render his decision promptly following the conclusion of his taking of evidence in the matter.

(c) Once the date of the hearing has been set, neither party will request a postponement.

(d) The decision of the Arbitrator shall be final and binding. The jurisdiction of the Arbitrator shall be limited to the interpretation or application of the terms of this Agreement, or

any agreement made supplementary hereto, and he shall have no authority to add to, subtract from, or to change any of such terms, including the existing wage rates set forth in Exhibits attached hereto. No more than one (1) grievance shall be arbitrated by any one Arbitrator; provided however, that more than one grievance may be heard by an arbitrator where the parties can agree concerning the issues involved.

(e) The costs and expenses of arbitration, including the compensation of the Arbitrator, shall be borne by the party losing the case. If the decision is not clear cut, the Arbitrator shall decide which party shall be assessed the costs.

Section 2. Grievances of a general or policy nature may be initiated by the Union in Step 3 of the Grievance Procedure, and if no satisfactory answer is given in Step 3, the Union may refer the grievance through the balance of the Grievance Procedure, subject to the terms and conditions thereof.

Section 3. Minutes of the meetings provided for herein may be taken by either the Company or the Union

Section 4. Employees shall file grievances promptly. No grievances shall be valid unless submitted in writing within twenty (20) working days after the employee or the Union knew, or by reasonable diligence could have known, of the facts giving rise to the grievance. In no event will the Company be required to pay more than ten (10) days back pay prior to the time the grievance was called to the attention of a Company representative in writing by the individual employee or by a Union representative.

Section 5. A grievance, except one which is in Step 4, shall be considered abandoned, if not appealed to the next Step within seven (7) working days after receiving disposition.

Section 6. Time limits set forth in this Article may be extended upon approval of both parties.

Section 7. Production standard grievances shall be handled in the following manner:

(a) In the event of an asserted grievance by an employee concerning production standards, the Foreman will get the standards sheet and explain all aspects of the standard to the employee and/or the Union Steward in the area.

(b) In the event the job standard is still in dispute, the grievance shall be reduced to writing and shall enter the Grievance Procedure in the Second Step, at which time the Committeeman for the area concerned with the grievance and appropriate representatives of Management shall attempt to resolve the matter.

(c) In the event the dispute remains unsettled following efforts by the Committeeman and Company representatives, the matter shall be taken up at the next regular grievance meeting which may be attended by representation from the UAW staff. In the event that the grievance shall still remain unresolved, the Company shall afford access within a reasonable time to the affected operation by a staff time study expert of the International Union, UAW, upon request in writing within ten (10) calendar days after such regular grievance meeting. The union expert shall be permitted an opportunity to make a study during normal day shift hours at a time when the contested job is operating.

(d) Upon exhaustion of the above procedure, but in no event later than thirty (30) days (excluding scheduled working days on which the contested job is not operating) after the date of the Union's notice pursuant to subsection (c) of this Section of its desire to study the disputed job, any grievance concerning a production standard may be referred to arbitration as provided in Step 4 of the Grievance Procedure by writing notice to the Director of the AAA. The foregoing thirty (30) day period may be extended for an additional thirty (30) calendar days by the parties if the union expert is unable to schedule a visit within the first period.

* * *

ARTICLE XIX
PRODUCTION INTERFERENCE

Section 1.

(a) The Union agrees that there shall be no strikes, walkouts, sitdowns, production retardings, or other similar interruptions of, or interferences with, work during the term of this Agreement for any reason.

(b) The Company agrees that there shall be no lockouts against bargaining unit members during the term of this Agreement.

ARTICLE XX
OTHER AGREEMENTS

Section 1. Memorandums of Agreement

Several Memorandums of Agreement were negotiated as part of the parties Collective Bargaining Agreement, dated April 1, 1994, but have been omitted from the printed document due to their limited function and/or otherwise inclusion into other provisions of the Agreement. However, such agreements are available for review in either the Union's office or in the Company's Human Resources office and are referred to as follows: (1) Settlement Agreement; (2) "Job Classification Revisions" Agreement; (3) Attachment to Data Entry Clerk M.I.S. Agreement (4) Inactive Codes Agreement; and (5) "Grievances Reinstitution" Agreement.

Section 2. Past Practices

Past practices affecting wages, hours or other conditions of employment, which have been generally accepted by the parties and which are not in conflict with written agreements reached by the parties on or after the effective date of this Agreement, shall remain in effect.

Section 3. Settlement

This Agreement, together with those certain Memorandums of Agreement each of which has been executed between the Company and the Union simultaneously herewith and which are

incorporated into this Agreement, constitute the entire contract between the Company and the Union and settle all demands and issues with respect to all matters subject to collective bargaining. Therefore, the Company and the Union, for the duration of this Agreement, waive the right, and each agrees that the other shall not be obligated to bargain collectively with respect to any subject or matter which is subject to collective bargaining, whether or not such subject or matter is specifically referred to herein.

ARTICLE XXI
DURATION

Section 1. This Agreement shall become effective as of APRIL 1, 1994, except as otherwise indicated herein, and shall remain in effect up to and including APRIL 4, 1997, and shall automatically renew itself from year to year thereafter unless written notice to terminate or amend this Agreement is given by either party to the other at least sixty (60) days prior to APRIL 4, 1997 or prior to the date of expiration of any annual renewal hereof.

Section 2. If notice of termination shall be given, negotiations for a new agreement shall take place during the sixty (60) days prior to the expiration of this Agreement.

* * *

MEMORANDUM OF AGREEMENT
MAINTENANCE SUBCONTRACTING
February 1, 1994

A. If for general business reasons or because of the nature of the work, the Company desires to contract out work normally and historically performed by the Maintenance employees of the Production and Maintenance Unit, the Union will be advised of such potential contract seven (7) working days prior to contracting out of the work. This seven (7) day period will provide an opportunity for the Union and the Company to discuss and look for alternative action to maintain said work in house. This seven (7) day requirement shall not apply in case of a maintenance emergency; provided, however, that in such instance the

Company shall give the Union as much prior notice of contracting as is reasonable under the circumstances.

B. If work of a type normally performed by bargaining unit maintenance craftsmen is to be performed in the plant by a subcontractor's craftsmen on a Saturday, Sunday or holiday, the Company will call in an equal number of bargaining unit maintenance employees for each craft so utilized, and shall afford them an equivalent amount of work (not to exceed eight (8) hours on each such day). The bargaining unit employees who are called in shall perform any duties assigned by the Company, regardless of any contrary provisions of the current labor agreement, and shall not be restricted to the performance of maintenance work; provided, however, that they shall be paid at their appropriate maintenance craft rates for all work so performed.

In the event that no work shall be regularly scheduled by the Company in the Maintenance Department during all or any part of the period from 3:30 PM to 7:00 AM (herein called "the second and third shifts"), and work of a type defined above is to be performed in the plant by a subcontractor's craftsman during hours falling in whole or in part within the second and third shifts, the Company will call in an equal number of bargaining unit maintenance employees of like craft to work as above provided, it being understood that the bargaining unit craftsmen may be assigned such equivalent call-in work on any shift not then regularly scheduled for them on the day of call-in.

In the event the procedure as outlined in (A) above is not complied with, the following will apply:

In the event work of the type defined above is performed in the plant during the regular work week, the bargaining unit employees on the affected shift shall, in addition to their normal compensation, be compensated by the Company for the hours worked by the contractor's employees during their shift at the appropriate straight-time rates. The Company's monetary liability under this paragraph shall be limited to the total number of hours worked by the contractor's employees.

* * *

MEMORANDUM OF AGREEMENT

PRODUCTION SUBCONTRACTING

February 2, 1994

If for general business reasons or because of the nature of the work, the Company desires to contract out work normally and historically performed by the Production employees of the Production and Maintenance Unit, the Union will be advised of such potential contract seven (7) working days prior to contracting out of the work. This seven (7) day period will provide an opportunity for the Union and the Company to discuss and look for alternative action to maintain said work in house. This seven (7) day requirement shall not apply when production emergencies require contracting on shorter notice; provided, however, that in such instance the Company shall give the Union as much prior notice of contracting as is reasonable under the circumstances.

* * *

[Filed Nov. 16, 1995]

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT, PENNSYLVANIA
WILLIAMSPORT DIVISION

UNITED AUTOMOBILE,
AEROSPACE AND
AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA,
AND ITS LOCAL 787
Plaintiff,
v.

Civil Action No.
Jury Demanded

TEXTRON LYCOMING
RECIPROCATING ENGINE
DIVISION, AVCO CORP.
Defendant.

COMPLAINT

The plaintiff brings this suit under Section 301 of the Labor Management Relations Act, 29 U.S.C. 185 et seq. Plaintiff complains as follows:

1. Plaintiff, the United Automobile, Aerospace and Agricultural Implement Workers of America, and its Local 787 (hereinafter the "UAW") is a labor organization which is the exclusive bargaining representative of the employees at Defendant's facilities in Williamsport, Pennsylvania. Plaintiff is a labor organization which represents employees defined by Section 2(5) of the National Labor Relations Act, 29 U.S.C. 152(5).

2. Defendant Textron Lycoming Reciprocating Engine Division, Avco Corporation, (hereinafter "Textron") is a wholly owned subsidiary of Textron, Inc. Defendant Textron makes aircraft engines at a factory and other facilities located in and around Williamsport, Pennsylvania. Defendant employs about 500 employees in the bargaining unit represented by Plaintiff at

these facilities. Defendant Textron is an employer engaged in commerce as defined by Section 2(2) of the National Labor Relations Act, 29 U.S.C 152(2).

3. Plaintiff and Defendant are parties to a collective bargaining agreement, which by its terms, covers the period from April 1, 1994 to April 4, 1997. This agreement is attached hereto as Exhibit "A".

4. This court has jurisdiction of this case pursuant to Section 301 of the Labor Management Relations Act, 29 U.S.C. Section 185. Venue is proper in this judicial district pursuant to 28 U.S.C. Section 1391(b).

5. Prior to entering into collective bargaining for the 1994-97 contract, the UAW demanded information from Textron in order to carry out its collective bargaining duties. On October 28, 1993, the UAW demanded that the Company disclose information regarding work "which the Company currently plans to move or subcontract or is considering moving or subcontracting" and "for all written reports, memoranda, projections and feasibility studies concerning any contemplated movement of work from UAW represented locations during the period 1994-1997".

6. On December 8, 1993 and on December 29, 1993, the Union repeated its request for information related to any plans to move work from its bargaining unit.

7. At no time prior to the beginning of negotiations for the 1994-97 collective bargaining agreement did Defendant Textron disclose any information regarding any plans to move bargaining unit work for the upcoming contract period.

8. When negotiations began on January 6, 1994, UAW negotiators specifically inquired whether Defendant Textron had any plans to move bargaining unit work during the upcoming three year period.

9. At the negotiations session on January 6, 1994, Frank Ratchford, the Vice-President of Human Resources of Defendant Textron, stated that he knew of no plans to move bargaining unit

work. Ratchford also promised to check to ensure that his knowledge was correct.

10. Neither Ratchford nor any other company official ever raised the issue of the possibility of the movement of bargaining unit work again during negotiations. Negotiations for the new contract took place between January and the end of March, 1994.

11. Unknown to the UAW, Defendant Textron was formulating a secret plan to subcontract a substantial part of the Company's parts production operations at the time negotiations for the contract were occurring. The formulation of this secret plan was complete before the parties completed negotiations. Implementation of this plan to subcontract parts production could result in the layoff of about one-half of the employees represented by the UAW at the Williamsport plant.

12. Defendant Textron never disclosed its plan to subcontract parts production to the to the UAW during the negotiations for the 1994-97 contract.

13. In reliance upon the representations of Defendant's representatives, the UAW did not raise issues or make any contract demands related to the movement or subcontracting of bargaining unit work during the negotiations over the new contract. Additionally, based upon the representations of Defendant's representatives, the UAW did not pursue its unanswered request for information on the subject.

14. The UAW's reliance on Defendant's representations in January 1994 that no subcontracting or movement of work was contemplated and on Defendant's later silence on the issue was reasonable.

15. After the UAW agreed to and ratified a three year collective bargaining agreement in April 1994, the Board of Directors of Textron formally adopted the secret plan to subcontract parts production that had always been performed by UAW members. This plan was announced to the Union and to its members on June 2, 1994. At the time of the announcement, Defendant Textron informed its employees that about one-half of them would

lose their jobs when the subcontracting plan was fully implemented.

16. In reliance upon the material misrepresentations and concealments of Defendant Textron, the UAW agreed to a collective bargaining agreement that it would have not otherwise agreed to. The collective bargaining agreement, therefore, is voidable at the option of the UAW.

Wherefore, Plaintiff UAW requests that this court grant the following relief:

a) that it render a declaratory judgment that the existing collective bargaining agreement between the parties is voidable at the option of Plaintiff UAW;

b) that it award compensatory and punitive damages to the Union and to its members to compensate them for the harm caused by the Defendant's misrepresentations and concealments and to deter other Employers from similar conduct;

c) that it award costs and reasonable attorneys fees to the plaintiff for bringing this cause of action.

d) that it take such other action that it deems equitable and just.

Respectfully submitted,

/s/ Stephen A. Yokich
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DEMAND FOR TRIAL BY JURY

Pursuant to Federal Rule of Civil Procedure 38 (b), the Plaintiff hereby requests a jury trial in this matter.

/s/ Stephen A. Yokich
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IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, AND ITS LOCAL 787,
Plaintiff,
v.
TEXTRON LYCOMING RECIPROCATING ENGINE DIVISION, AVCO CORP.,
Defendant.

No. 4:CV-95-1918
Judge McClure

ORDER

Entered March 21, 1996

(Found in the Appendix to the Petition for Certiorari at 14a-18a)

[Filed April 22, 1996]

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT, PENNSYLVANIA
WILLIAMSPORT DIVISION

UNITED AUTOMOBILE,
AEROSPACE AND
AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA,
AND ITS LOCAL 787,
Plaintiff,

v.

TEXTRON LYCOMING
RECIPROCATING ENGINE
DIVISION, AVCO CORP.,
Defendant.

CASE NO.
4:CV-95-1918
Hon. James F. McClure

NOTICE OF APPEAL

Notice is hereby given that Plaintiff, United Automobile, Aerospace and Agricultural Implement Workers of America, International Union and its Local 787 hereby appeal to the United States Court of Appeals for the Third Circuit from the decision of the Honorable James McClure, granting Defendant's Motion to Dismiss entered in this action on March 21, 1996.

/s/ Stephen A. Yokich
Stephen A. Yokich
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[Filed April 30, 1996]

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
FOURTH REGION

TEXTRON LYCOMING RECIPROCATING
ENGINE DIVISION/SUBSIDIARY
OF TEXTRON INC.

and Case 4-CA-23285

INTERNATIONAL UNION, UNITED
AUTOMOBILE, AEROSPACE AND
AGRICULTURAL IMPLEMENT WORKERS
OF AMERICA, (UAW) AND ITS LOCAL 787

COMPLAINT AND NOTICE OF HEARING

International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, (UAW) and its Local 787, herein called the UAW and the Local, respectively, and herein also collectively called the Union, has charged that Textron Lycoming Reciprocating Engine Division/Subsidiary of Textron Inc., herein called Respondent, has been engaging in unfair labor practices as set forth in the National Labor Relations Act, 29 U.S.C. Section 151, *et seq.*, herein called the Act. Based thereon, the General Counsel, by the undersigned, pursuant to Section 10(b) of the Act and Section 102.15 of the Rules and Regulations of the National Labor Relations Board, herein called the Board, issues this Complaint and Notice of Hearing and alleges as follows:

1. (a) The charge in this proceeding was filed by the Union on November 22, 1994, and a copy was served by certified mail on Respondent on November 23, 1994.

(b) The first amended charge in this proceeding was filed by the Union on June 12, 1995, and a copy was served by certified mail on Respondent on June 13, 1995.

2. (a) At all material times, Respondent, a Delaware corporation with a facility in Williamsport, Pennsylvania, herein called the Facility, has been engaged in the manufacture of aircraft engines.

(b) During the past year, Respondent, in conducting its business operations described above in subparagraph (a), purchased and received goods and materials valued in excess of $50,000 directly from points outside the Commonwealth of Pennsylvania.

(c) At all material times, Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

3. (a) At all material times, the UAW has been a labor organization within the meaning of Section 2(5) of the Act.

(b) At all material times, the Local has been a labor organization within the meaning of Section 2(5) of the Act.

4. (a) The following employees of Respondent, herein called the Unit, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All production and maintenance employees, tool designers, hourly Airport Service employees, and also shop clerical employees covered by the NLRB Certificate, dated June 11, 1952, in Case No 4-RC-1424, but excluding plant protection employees, clerical and office employees, engineers, metallurgists, draftsmen, time study men, personnel department employees, accounting and payroll clerks, purchasing department employees, technical employees and all supervisory employees with authority to hire, promote, discharge, discipline or otherwise effect changes in the status of employees or effectively recommend such action.

(b) On or about March 28, 1994, Respondent and the Union entered into a collective bargaining agreement (herein called the Agreement) effective by its terms from April 1, 1994

through April 4, 1997, pursuant to which Respondent has recognized the Union as the exclusive collective bargaining representative of the Unit.

(c) As part of the Agreement, the Union retained a memorandum of agreement which grants Respondent certain rights to subcontract Unit work.

(d) At all material times, based on Section 9(a) of the Act, the Union has been the exclusive collective bargaining representative of the Unit.

5. At various times from on or about January 6, 1994, to on or about March 28, 1994, Respondent and the Union met for the purposes of collective bargaining with respect to the wages, hours, and other terms and conditions of employment of the Unit to be embodied in the Agreement.

6. (a) On or about October 28, 1993, the Union, by letter, requested Respondent to furnish the Union with all written reports, memoranda, projections and feasibility studies concerning any contemplated subcontracting during the period 1994-1997.

(b) On or about January 6, 1994, the Union, in a bargaining session, made an oral request for anything "on paper" regarding Respondent's future subcontracting plans.

(c) The information requested by the Union, as described above in subparagraphs (a) and (b), is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective bargaining representative of the Unit.

(d) Since at least February 25, 1994, until June 1995, a more precise date being presently unknown to the General Counsel, Respondent: (i) failed and refused to furnish the Union with the information requested by it as described above in subparagraphs (a) and (b); (ii) withheld from the Union a document known as a "Restructure Review"; and (iii) failed to apprise the Union of its plans to subcontract substantial unit work, thereby inducing the Union to agree to retain the subcontracting language referred to above in paragraph 4(c).

(e) By its conduct described above in subparagraph (d), Respondent failed and refused to bargain in good faith with the Union as the exclusive collective bargaining representative of the Unit.

7. (a) On or about June 2, 1994, Respondent announced that it intended to subcontract the manufacturing of all engine parts.

(b) On or about June 13, 1994, Respondent announced that it intended to subcontract all Unit work in nine named departments.

(c) The subjects set forth in subparagraphs (a) and (b), relate to wages, hours, and other terms and conditions of employment of the Unit, and are mandatory subjects for the purposes of collective bargaining.

(d) Respondent engaged in the conduct described above in subparagraphs (a) and (b), without affording the Union an opportunity to bargain with Respondent with respect to this conduct.

8. By the conduct described above in paragraphs 6(d) and 7, Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective bargaining representatives of its employees within the meaning of Section 8(d) of the Act in violation of Section 8(a)(1) and (5) of the Act.

9. The unfair labor practices of Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

As part of the remedy for the unfair labor practices alleged above in paragraphs 6, 7 and 8, the General Counsel seeks an order requiring Respondent to: (1) bargain about its decisions to subcontract Unit work; (2) refrain from enforcing the fraudulently procured subcontracting clause referred to above in paragraph 4(c); (3) upon the Union's demand, bargain to agreement or good faith impasse about a contractual subcontracting clause; and (4) make the Unit employees whole for any lost wages or benefits they suffered as a result of Respondent's implementation of its subcontracting decisions.

PLEASE TAKE NOTICE that commencing at 11:00 a.m. on the 21st day of October, 1996, and on consecutive days thereafter, a hearing will be conducted in a hearing room of the National Labor Relations Board, Fourth Region, 615 Chestnut Street, 7th Floor, Philadelphia, Pennsylvania, before an Administrative Law Judge of the Board on the allegations in this Complaint, at which time and place any party within the meaning of Section 102.8 of the Board's Rules and Regulations will have the right to appear and present testimony.

The Respondent is further notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, Respondent shall file with the undersigned an original and four (4) copies of an answer to this Complaint within 14 days from service of it, and that unless Respondent does so, all the allegations in the Complaint shall be considered to be admitted to be true and shall be so found by the Board. The Respondent is also notified that pursuant to the Board's Rules and Regulations, the Respondent shall serve a copy of its answer on each of the other parties.

Form NLRB-4338, Notice, and Form NLRB-4668, Statement of Standard Procedures in Formal Hearings Held Before the National Labor Relations Board in Unfair Labor Practice Cases, are attached.

Dated at Philadelphia, Pennsylvania this 30th day of April, 1996:

/s/ Peter W. Hirsch
PETER W. HIRSCH
Regional Director, Fourth Region
National Labor Relations Board

IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

UNITED AUTOMOBILE, AEROSPACE AND
AGRICULTURAL IMPLEMENT WORKERS OF AMERICA,
INTERNATIONAL UNION AND ITS LOCAL 787,
Appellant,
v.

TEXTRON LYCOMING RECIPROCATING ENGINE
DIVISION, AVCO CORP.,
Appellee.

No. 96-7261

JUDGMENT

Entered on July 1, 1997

(Found in the Appendix to the Petition for Certiorari at 19a-20a)

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

UNITED AUTOMOBILE, AEROSPACE AND
AGRICULTURAL IMPLEMENT WORKERS OF AMERICA,
INTERNATIONAL UNION AND ITS LOCAL 787,
Appellant,

v.

TEXTRON LYCOMING RECIPROCATING ENGINE
DIVISION, AVCO CORP.,
Appellee.

No. 96-7261

OPINION OF THE COURT

Decided July 1, 1997

(Found in the Appendix to the Petition for Certiorari at 1a-13a)

SUPREME COURT OF THE UNITED STATES

No. 97-463

TEXTRON LYCOMING RECIPROCATING ENGINE DIVISION, AVCO CORP.,

Petitioner

v.

UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, INTERNATIONAL UNION AND ITS LOCAL 787

ORDER ALLOWING CERTIORARI

Filed November 14, 1997

The petition herein for a writ of certiorari to the United States Court of Appeals for the Third Circuit is granted. The brief of petitioner is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Monday, December 29, 1997. The brief of respondent is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Wednesday, January 28, 1998. A reply brief, if any, may be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Wednesday, February 18, 1998. Rule 29.2 does not apply.

November 14, 1997